

By: Villarreal

H.B. No. 2706

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to certain extensions of consumer credit facilitated by  
3 credit access businesses; providing a civil penalty.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 392.301(a), Finance Code, is amended to  
6 read as follows:

7 (a) In debt collection, a debt collector may not use  
8 threats, coercion, or attempts to coerce that employ any of the  
9 following practices:

10 (1) using or threatening to use violence or other  
11 criminal means to cause harm to a person or property of a person;

12 (2) accusing falsely or threatening to accuse falsely  
13 a person of fraud or any other crime;

14 (3) representing or threatening to represent to any  
15 person other than the consumer that a consumer is wilfully refusing  
16 to pay a nondisputed consumer debt when the debt is in dispute and  
17 the consumer has notified in writing the debt collector of the  
18 dispute;

19 (4) threatening to sell or assign to another the  
20 obligation of the consumer and falsely representing that the result  
21 of the sale or assignment would be that the consumer would lose a  
22 defense to the consumer debt or would be subject to illegal  
23 collection attempts;

24 (5) threatening that the debtor will be arrested for

1 nonpayment of a consumer debt without proper court proceedings;

2 (6) threatening to file a charge, complaint, or  
3 criminal action against a debtor when the debtor has not violated a  
4 criminal law;

5 (7) threatening that nonpayment of a consumer debt  
6 will result in the seizure, repossession, or sale of the person's  
7 property without proper court proceedings;

8 (8) referencing a certification signed by the consumer  
9 as required by Section 393.630 or the penalties associated with a  
10 violation of that section; or

11 (9) [~~8~~] threatening to take an action prohibited by  
12 law.

13 SECTION 2. Subchapter A, Chapter 393, Finance Code, is  
14 amended by adding Section 393.004 to read as follows:

15 Sec. 393.004. LIMITATION ON EXTENSIONS OF CONSUMER CREDIT  
16 AND REFINANCING. (a) A credit services organization may not obtain  
17 for a consumer or assist a consumer in obtaining an extension of  
18 consumer credit in any form other than in the form of a deferred  
19 presentment transaction that meets the requirements of Section  
20 393.634 or 393.635, or a motor vehicle title loan that meets the  
21 requirements of Section 393.636 or 393.637.

22 (b) Any refinance of an extension of consumer credit in the  
23 form of a deferred presentment transaction or motor vehicle title  
24 loan that a credit services organization obtains for a consumer or  
25 assists a consumer in obtaining:

26 (1) must be authorized under Subchapter G;

27 (2) may not advance additional cash to the consumer;

1 and

2 (3) must meet all the requirements under Subchapter G  
3 applicable to the original extension of consumer credit, except as  
4 specifically provided otherwise by an applicable provision of  
5 Subchapter G.

6 SECTION 3. Section 393.222, Finance Code, is amended by  
7 adding Subsection (a-1) to read as follows:

8 (a-1) A credit access business shall post, in the same  
9 manner as a notice required under Subsection (a), and provide as a  
10 separate document to a consumer, a notice prescribed by the Finance  
11 Commission of Texas regarding the availability of extended payment  
12 plans that describes the parameters of the plans.

13 SECTION 4. Section 393.223(a), Finance Code, is amended to  
14 read as follows:

15 (a) Before performing services described by Section  
16 393.221(1), a credit access business must provide to a consumer a  
17 disclosure adopted by rule of the Finance Commission of Texas that  
18 discloses the following in a form prescribed by the commission:

19 (1) the interest, fees, and annual percentage rates,  
20 as applicable, to be charged on a deferred presentment transaction  
21 or on a motor vehicle title loan, as applicable, in comparison to  
22 interest, fees, and annual percentage rates to be charged on other  
23 alternative forms of consumer debt;

24 (2) the amount of accumulated fees a consumer would  
25 incur by renewing or refinancing a deferred presentment transaction  
26 or motor vehicle title loan that remains outstanding for a period of  
27 two weeks, one month, two months, and three months; [~~and~~]

1 (3) information regarding the typical pattern of  
2 repayment of deferred presentment transactions and motor vehicle  
3 title loans; and

4 (4) the name of the credit access business and any  
5 unique number assigned to the license issued to the business under  
6 Subchapter G.

7 SECTION 5. Section 393.625, Finance Code, is amended to  
8 read as follows:

9 Sec. 393.625. MILITARY BORROWERS. (a) In this section,  
10 "military borrower" includes a "covered member" or a "dependent" of  
11 a covered member, as those terms are defined by 10 U.S.C. Section  
12 987 or a successor statute.

13 (b) An extension of consumer credit described by Section  
14 393.602(a) that is obtained by a credit access business for a  
15 military borrower [~~member of the United States military or a~~  
16 ~~dependent of a member of the United States military]~~ or that the  
17 business assisted a military borrower [~~that person~~] in obtaining  
18 must comply with 10 U.S.C. Section 987 and any regulations adopted  
19 under that law, to the extent applicable.

20 (c) The term of an extension of consumer credit described by  
21 Section 393.602(a), including all renewals and refinances,  
22 obtained for a military borrower by a credit access business or that  
23 a credit access business assists a military borrower in obtaining  
24 may not exceed:

25 (1) 90 days, if the debt is a deferred presentment  
26 transaction; or

27 (2) 180 days, if the debt is a motor vehicle title

1 loan.

2 SECTION 6. Subchapter G, Chapter 393, Finance Code, is  
3 amended by adding Sections 393.629 through 393.639 to read as  
4 follows:

5 Sec. 393.629. GENERAL LIMITATIONS ON EXTENSIONS OF CONSUMER  
6 CREDIT. (a) The provisions of this chapter applicable to a credit  
7 access business apply to any consumer physically located in this  
8 state at the time the extension of consumer credit is made,  
9 regardless of whether the extension of consumer credit was made in  
10 person in this state.

11 (b) For purposes of this chapter, an extension of consumer  
12 credit obtained for a consumer by a credit access business or that a  
13 credit access business assists a consumer in obtaining on or before  
14 the fifth day after the date the consumer pays the debt on a  
15 previous extension of consumer credit in full is considered a  
16 refinance of the previous debt.

17 (c) The term of an extension of consumer credit obtained for  
18 a consumer by a credit access business or that a credit access  
19 business assists a consumer in obtaining may not exceed 180 days.

20 (d) A credit access business that obtains for a consumer or  
21 assists a consumer in obtaining an extension of consumer credit  
22 shall provide to the consumer a copy of the agreement between the  
23 business and the consumer, and all notices required to be given to  
24 the consumer under this chapter, in Spanish if the consumer  
25 requests that the documents be provided in Spanish or if the  
26 agreement is negotiated in Spanish. The executed agreement between  
27 the credit access business and the consumer must be written in

1 English.

2 (e) With a consumer's written consent, a debt incurred under  
3 an extension of consumer credit that a credit access business  
4 obtained for the consumer or assisted the consumer in obtaining may  
5 be sold to another credit access business licensed under this  
6 subchapter. All transaction limits applicable to the debt before  
7 the sale apply to the debt after the debt is sold, except that the  
8 term of the extension of consumer credit may not exceed 180 days,  
9 beginning on the date the debt is sold. The sale of a debt under  
10 this subsection is considered to be a refinance of the debt for  
11 purposes of the applicable transaction limits.

12 (f) Before obtaining for a consumer or assisting a consumer  
13 in obtaining an extension of consumer credit, a credit access  
14 business shall consider the ability of the consumer to repay the  
15 debt within the term provided by law for the original extension of  
16 credit and any authorized renewal or refinance.

17 Sec. 393.630. LIMITATION ON OUTSTANDING DEBT. (a) A  
18 consumer may have only one outstanding debt from an extension of  
19 consumer credit that a credit access business obtained for the  
20 consumer or assisted the consumer in obtaining.

21 (b) To obtain an extension of consumer credit facilitated  
22 through the services of a credit access business, a consumer must  
23 sign a written certification stating that the consumer:

24 (1) at that time has no other outstanding debt from an  
25 extension of consumer credit that any credit access business  
26 obtained for the consumer or assisted the consumer in obtaining;

27 (2) has not owed a debt subject to an extended payment

1 plan that a credit access business obtained for the consumer or  
2 assisted the consumer in obtaining during the preceding 14 days;  
3 and

4 (3) has not gone into default on a debt that a credit  
5 access business obtained for the consumer or assisted the consumer  
6 in obtaining during the preceding 30 days.

7 (c) For purposes of Subsection (b)(3), a consumer is not  
8 considered in default if the consumer made a payment on a debt on or  
9 before the 10th day after the date the payment was due.

10 (d) A credit access business shall in good faith verify that  
11 a consumer is not falsifying the certification required by  
12 Subsection (b), to the best knowledge and ability of the person  
13 acting on behalf of the credit access business for that  
14 transaction.

15 (e) A person acting on behalf of a credit access business  
16 has satisfied the requirement of Subsection (d) if the person  
17 considers all information that the consumer shares with the person  
18 in negotiating the transaction and if the person makes a reasonable  
19 effort to verify the consumer's representations with any records  
20 that the credit access business typically consults in the normal  
21 course of its business.

22 (f) A consumer who falsifies statements contained in the  
23 certification violates this section.

24 (g) A credit access business or a consumer who violates this  
25 section is subject to a civil penalty in an amount not to exceed  
26 \$1,000 for each violation.

27 (h) The finance commission shall adopt rules to implement

1 this section.

2 Sec. 393.631. LIMITATIONS RELATING TO MOTOR VEHICLE  
3 SECURING DEBT. (a) Notwithstanding any other provision of law, the  
4 proceeds of the sale of a repossessed motor vehicle that secured an  
5 extension of consumer credit shall satisfy all outstanding and  
6 unpaid indebtedness under that extension of credit, and the  
7 consumer is not liable for any deficiency resulting from the sale  
8 unless the consumer has committed fraud in obtaining the extension  
9 of consumer credit.

10 (b) Any fee charged to a consumer for the repossession of a  
11 motor vehicle given as security for an extension of consumer credit  
12 must be reasonable.

13 Sec. 393.632. ESTABLISHMENT OF INCOME OR VALUE. (a) A  
14 credit access business must require documentation to establish a  
15 consumer's income for purposes of this subchapter. Acceptable  
16 forms of documentation include:

17 (1) a payroll document;  
18 (2) a paycheck;  
19 (3) a bank statement;  
20 (4) a report from a nationally or regionally  
21 recognized credit and data reporting company;

22 (5) Internal Revenue Service Form W-2 from the  
23 preceding year;

24 (6) the income tax return from the preceding tax year;

25 (7) a signed letter from the consumer's employer; or

26 (8) another document approved by finance commission

27 rule.

1       (b) A credit access business shall retain a copy of the  
2 documentation used to establish a consumer's income under  
3 Subsection (a) according to the business's standard records  
4 retention policy.

5       (c) To establish the retail value of a motor vehicle for  
6 purposes of this subchapter, a credit access business must:

7           (1) rely on a nationally or regionally recognized  
8 vehicle appraisal guide; or

9           (2) agree in good faith with the consumer to the  
10 vehicle's retail value.

11       Sec. 393.633. LOCAL ORDINANCES PREEMPTED. An ordinance  
12 adopted by a municipality or other political subdivision regulating  
13 a credit access business or an extension of consumer credit that a  
14 credit access business obtains for a consumer or assists a consumer  
15 in obtaining is preempted to the extent that the ordinance is not  
16 within the political subdivision's standard zoning or police  
17 powers.

18       Sec. 393.634. SINGLE-PAYMENT DEFERRED PRESENTMENT  
19 TRANSACTION. (a) The principal amount of a cash advance made under  
20 an extension of consumer credit in the form of a single-payment  
21 deferred presentment transaction that a credit access business  
22 obtains for a consumer or assists a consumer in obtaining may not  
23 exceed:

24           (1) 25 percent of the consumer's gross monthly income,  
25 if the consumer's annual income is not more than 125 percent of the  
26 federal poverty level for a family of four; or

27           (2) 35 percent of the consumer's gross monthly income,

1 if the consumer is not described by Subdivision (1) and is not a  
2 military borrower to whom a different limit applies under federal  
3 law.

4 (b) The term of an original or refinanced extension of  
5 consumer credit in the form of a single-payment deferred  
6 presentment transaction that a credit access business obtains for a  
7 consumer or assists a consumer in obtaining may not be less than 10  
8 days.

9 (c) An extension of consumer credit in the form of a  
10 single-payment deferred presentment transaction that a credit  
11 access business obtains for a consumer or assists a consumer in  
12 obtaining may not be refinanced more than four times.

13 (d) If a consumer has refinanced a single-payment deferred  
14 presentment transaction described by Subsection (c) four times:

15 (1) the credit access business shall offer an extended  
16 payment plan to the consumer, unless the consumer has entered into  
17 two or more extended payment plans in the preceding 12 months; and

18 (2) the consumer may request an extended payment plan  
19 at any time on or after the date the consumer refinances the  
20 single-payment deferred presentment transaction for the fourth  
21 time and on or before the date the deferred presentment transaction  
22 must be repaid in full.

23 (e) An extended payment plan authorized by Subsection (d)  
24 must comply with Section 393.638.

25 Sec. 393.635. MULTIPLE-PAYMENT DEFERRED PRESENTMENT  
26 TRANSACTION. (a) The sum of all scheduled payments due in a single  
27 month under an extension of consumer credit in the form of a

1 multiple-payment deferred presentment transaction that a credit  
2 access business obtains for a consumer or assists a consumer in  
3 obtaining may not exceed:

4 (1) 15 percent of the consumer's gross monthly income,  
5 if the consumer's annual income is not more than 125 percent of the  
6 federal poverty level for a family of four; or

7 (2) 20 percent of the consumer's gross monthly income,  
8 if the consumer is not described by Subdivision (1) and is not a  
9 military borrower to whom a different limit applies under federal  
10 law.

11 (b) An extension of consumer credit in the form of a  
12 multiple-payment deferred presentment transaction that a credit  
13 access business obtains for a consumer or assists a consumer in  
14 obtaining may not be payable by the consumer in more than 12  
15 installments, and the loan agreement must specify the number, date,  
16 and total amount due with regard to each installment.

17 (c) An extension of consumer credit in the form of a  
18 multiple-payment deferred presentment transaction that a credit  
19 access business obtains for a consumer or assists a consumer in  
20 obtaining must be payable on a fully amortizing, declining  
21 principal balance basis with substantially equal payments.

22 (d) The first installment of an extension of consumer credit  
23 in the form of a multiple-payment deferred presentment transaction  
24 that a credit access business obtains for a consumer or assists a  
25 consumer in obtaining may not be due before the 10th day after the  
26 date the consumer enters into the loan agreement. An installment  
27 may not be due before the 14th day or after the 31st day after the

1 date a previous installment is due.

2 (e) An extension of consumer credit in the form of a  
3 multiple-payment deferred presentment transaction that a credit  
4 access business obtains for a consumer or assists a consumer in  
5 obtaining may be refinanced only one time, and the combined terms of  
6 the original extension of consumer credit and the refinanced  
7 extension of consumer credit may not exceed 270 days. A credit  
8 access business is not required to offer an extended payment plan  
9 for an extension of consumer credit in the form of a  
10 multiple-payment deferred presentment transaction.

11 Sec. 393.636. SINGLE-PAYMENT MOTOR VEHICLE TITLE LOAN. (a)  
12 The principal amount of a cash advance made under an extension of  
13 consumer credit in the form of a single-payment motor vehicle title  
14 loan that a credit access business obtains for a consumer or assists  
15 a consumer in obtaining may not exceed the lesser of:

16 (1) six percent of the consumer's gross annual income,  
17 if the consumer's annual income is not more than 125 percent of the  
18 federal poverty level for a family of four;

19 (2) eight percent of the consumer's gross annual  
20 income, if the consumer is not described by Subdivision (1) and is  
21 not a military borrower to whom a different limit applies under  
22 federal law; or

23 (3) 70 percent of the retail value of the motor vehicle  
24 securing the debt.

25 (b) The term of an original or refinanced extension of  
26 consumer credit in the form of a single-payment motor vehicle title  
27 loan that a credit access business obtains for a consumer or assists

1 a consumer in obtaining may not be less than 30 days.

2 (c) An extension of consumer credit in the form of a  
3 single-payment motor vehicle title loan that a credit access  
4 business obtains for a consumer or assists a consumer in obtaining  
5 may not be refinanced more than six times.

6 (d) If a consumer has refinanced a single-payment motor  
7 vehicle title loan described by Subsection (c) six times:

8 (1) the credit access business must offer an extended  
9 payment plan to the consumer before initiating any activities to  
10 repossess the vehicle securing the debt; and

11 (2) the consumer may request an extended payment plan  
12 at any time on or after the date the consumer refinances the motor  
13 vehicle title loan for the sixth time and on or before the date the  
14 motor vehicle title loan must be repaid in full.

15 (e) An extended payment plan authorized by Subsection (d)  
16 must comply with Section 393.638.

17 Sec. 393.637. MULTIPLE-PAYMENT MOTOR VEHICLE TITLE LOAN.

18 (a) The principal amount of a cash advance made under an extension  
19 of consumer credit in the form of a multiple-payment motor vehicle  
20 title loan that a credit access business obtains for a consumer or  
21 assists a consumer in obtaining may not exceed 70 percent of the  
22 retail value of the motor vehicle securing the debt.

23 (b) A scheduled payment under a contract for an extension of  
24 consumer credit in the form of a multiple-payment motor vehicle  
25 title loan that a credit access business obtains for a consumer or  
26 assists a consumer in obtaining may not exceed:

27 (1) 15 percent of the consumer's gross monthly income,

1 if the consumer's annual income is not more than 125 percent of the  
2 federal poverty level for a family of four; or

3 (2) 20 percent of the consumer's gross monthly income,  
4 if the consumer is not described by Subdivision (1) and is not a  
5 military borrower to whom a different limit applies under federal  
6 law.

7 (c) An extension of consumer credit in the form of a  
8 multiple-payment motor vehicle title loan that a credit access  
9 business obtains for a consumer or assists a consumer in obtaining  
10 must be payable on a fully amortizing, declining principal balance  
11 basis with substantially equal payments.

12 (d) An extension of consumer credit in the form of a  
13 multiple-payment motor vehicle title loan that a credit access  
14 business obtains for a consumer or assists a consumer in obtaining  
15 may not be payable by the consumer in more than six installments,  
16 and the loan agreement must specify the number, date, and total  
17 amount due with regard to each installment.

18 (e) The first installment of an extension of consumer credit  
19 in the form of a multiple-payment motor vehicle title loan that a  
20 credit access business obtains for a consumer or assists a consumer  
21 in obtaining may not be due before the 10th day after the date the  
22 consumer enters into the loan agreement. A subsequent installment  
23 may not be due before the 30th day after the date the previous  
24 installment of the loan is due.

25 (f) An extension of consumer credit in the form of a  
26 multiple-payment motor vehicle title loan that a credit access  
27 business obtains for a consumer or assists a consumer in obtaining

1 may be refinanced only one time, and the combined terms of the  
2 original extension of consumer credit and the refinanced extension  
3 of consumer credit may not exceed 270 days.

4 (g) A credit access business may not initiate any activities  
5 to repossess the vehicle securing the debt under a multiple-payment  
6 motor vehicle title loan that a credit access business obtains for a  
7 consumer or assists a consumer in obtaining before offering the  
8 consumer an extended payment plan. An extended payment plan  
9 authorized by this subsection must comply with Section 393.638.

10 Sec. 393.638. EXTENDED PAYMENT PLAN REQUIREMENTS. (a)  
11 This section applies to extended payment plans permitted under  
12 Sections 393.634, 393.636, and 393.637.

13 (b) An extended payment plan must provide for payment in at  
14 least:

15 (1) four substantially equal installments, after  
16 which the outstanding balance will be paid in full, with respect to  
17 a single-payment deferred presentment transaction or  
18 single-payment motor vehicle title loan; or

19 (2) two additional substantially equal installments,  
20 after which the outstanding balance, including only the fees and  
21 interest that would have been due under the original extension of  
22 consumer credit, will be paid in full, with respect to a  
23 multiple-payment motor vehicle title loan.

24 (c) The period between installment payments on an extended  
25 payment plan may not be shorter than:

26 (1) the term of the original extension of credit, with  
27 respect to a single-payment deferred presentment transaction; or

1           (2) 30 days, with respect to a single-payment or  
2 multiple-payment motor vehicle title loan.

3           (d) The first payment owed under an extended payment plan  
4 may not be due before the 10th day after the date the consumer  
5 requests an extended payment plan.

6           (e) A credit access business may not assess additional fees  
7 or interest or assist a consumer in obtaining additional extensions  
8 of consumer credit if the consumer is paying an extension of credit  
9 under an extended payment plan.

10           (f) A consumer may pay in full a debt subject to an extended  
11 payment plan at any time without prepayment penalties.

12           (g) A person may not engage in debt collection or vehicle  
13 repossession activities for a debt subject to an extended payment  
14 plan if the consumer is in compliance with the extended payment  
15 plan.

16           Sec. 393.639. RULES. The finance commission may adopt any  
17 rules necessary to implement Sections 393.629-393.638.

18           SECTION 7. The changes in law made by this Act apply only to  
19 an extension of consumer credit made on or after the effective date  
20 of this Act. An extension of consumer credit made before the  
21 effective date of this Act is governed by the law in effect on the  
22 date the extension of consumer credit was made, and the former law  
23 is continued in effect for that purpose. For purposes of this  
24 section, a refinance or renewal of an extension of consumer credit  
25 is considered made on the date the extension of consumer credit  
26 being refinanced or renewed was made.

27           SECTION 8. This Act takes effect September 1, 2013.